TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~430.~~ 20034

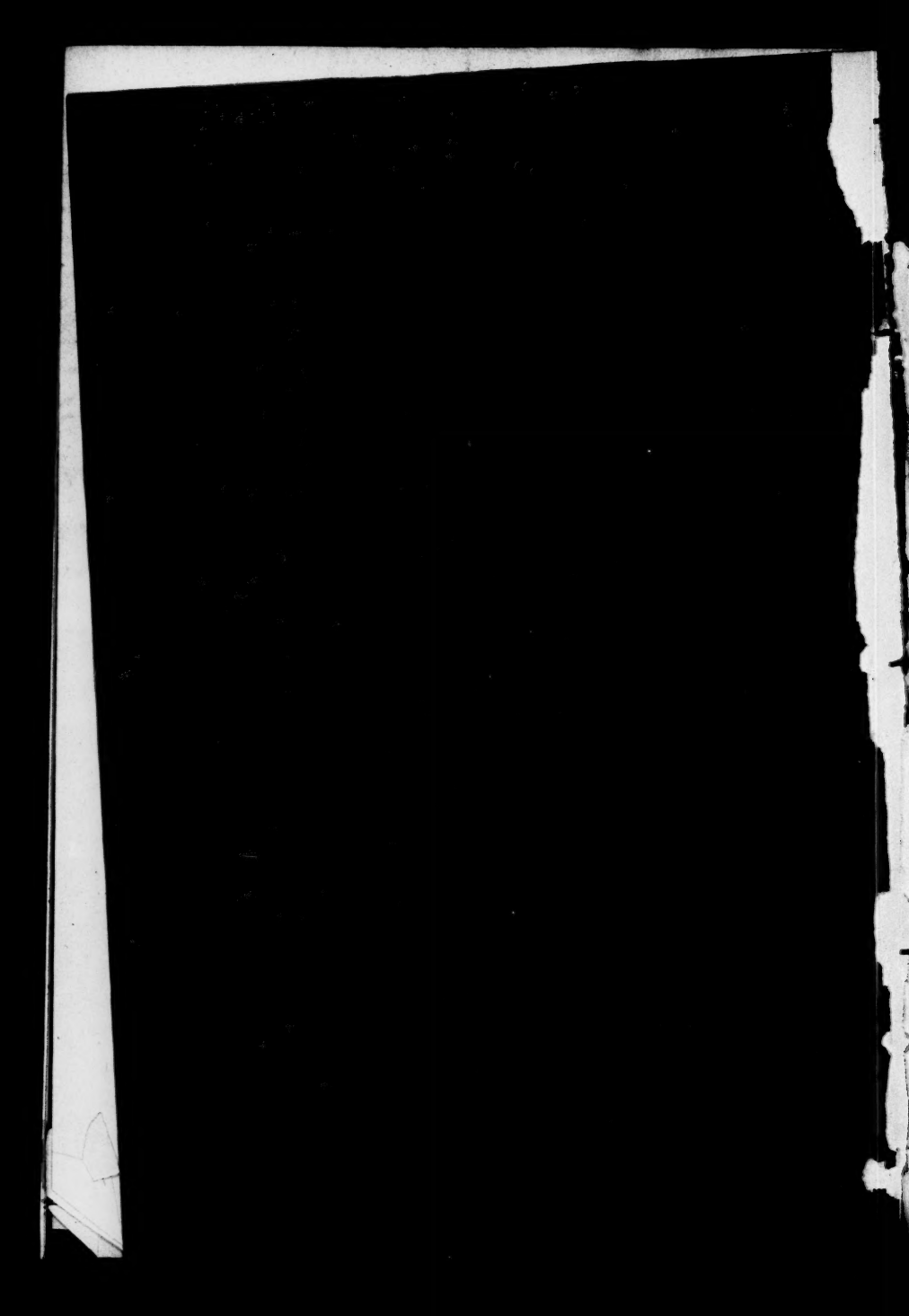
THE TRAVELERS' INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

ELIZABETH SEAVER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF VERMONT.

FILED NOVEMBER 29, 1871.



SUPREME COURT OF THE UNITED STATES.

No. 436.

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a UNITED STATES OF AMERICA :-

The President of the United States to the judges of the circuit court of the United States for the district of Vermont, greeting:

Because, in the records and proceedings, and also in the rendition of the judgement of a plea, which is in the said circuit court, before you, between Elizabeth Seaver and The Travelers Insurance Company, manifest error hath happened, to the great damage of the said Travelers Insurance Company, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgement be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

b Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 12th day of May, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] B. B. SMALLEY,
Clerk U. S. Circuit Court for the District of Vermont.

Allowed & noted to be filed in due form of law.
May 12, 1871.

D. A. SMALLEY, *Judge.*

(Indorsed:) U. S. Sup. Court. Writ of error. The Travellers Ins. Co., pl'ff in error, vs. Elizabeth Seaver, def't in error. Filed May 12, 1871. B. B. Smalley, clerk. E. J. Phelps, att'y for pl'ff in error.

DISTRICT OF VERMONT, *ss:*

I, B. B. Smalley, clerk of the circuit court of the United States of America for the district of Vermont, in the second circuit, by virtue of the within writ of error, & in obedience thereto, do hereby certify that the following pages, numbered from 1 to 54, inclusive, contain a true & complete transcript of the record & proceedings had in said court in the case of The Travellers Insurance Company, pl'ff in error, vs. Elizabeth Seaver, defendant in error, as the same remain of record & on file in said court.

In witness whereof I have hereunto set my hand & affixed the seal of said court, at Burlington, in said district, this 15th day of November, A. D. 1871.

[SEAL.] B. B. SMALLEY, *Clerk.*

1 United States circuit court, district of Vermont.

ELIZABETH W. SEAVER
vs.
THE TRAVELERS INSURANCE COMPANY.

Be it remembered that, at a term of the circuit court of the second

circuit of the United States, begun and holden at Windsor, within & for the Vermont district, on the fourth Tuesday of July, A. D. 1868, comes the Travelers Insurance Company, of Hartford, in the State of Connecticut, by Dewey & Noble, its attorneys, and brings into court now here an exemplified copy from the county court, within & for the county of Lamoille, State & district of Vermont; which said copy is in the words & figures following:

STATE OF VERMONT,
Lamoille County, ss:

To any sheriff or constable in the State, greeting:

By the authority of the State of Vermont, you are hereby commanded to attach the goods, chattels, or estate of The Travelers Insurance Company, a corporation chartered by the legislature of Con-
2 necticut, and located at Hartford, in the State of Connecticut, to wit, at Stowe, in the county of Lamoille, to the value of 6,000 dollars, and notify them thereof according to law, and also notify them to appear before the county court, next to be held at Hyde Park, within and for said county of Lamoille, on the 1st Tuesday of December next, then and there, in said court, to answer to Elizabeth W. Seaver, of Stowe, in the county of Lamoille, in a plea of the case, for that the defendant, at Montpelier, in the county of Washington, on the 23d day of March, A. D. 1866, in consideration of the sum of eighteen dollars by John B. Seaver then and there paid to the defendant, by their policy of that date duly issued, insured the life of the said John B. Seaver for one year for the sum of three thousand dollars, for the benefit of the plaintiff, in the terms and words following, viz:

"In consideration of eighteen dollars, the receipt of which is hereby acknowledged, The Travelers Insurance Company do hereby insure John B. Seaver against loss of life or personal injury in the sum of three thousand dollars, to be paid to Elizabeth W. Seaver or his legal repre-
sentatives within ninety days after sufficient proof that the as-
3 sured, at any time within twelve months after the date of this policy, shall have sustained personal injury caused by any accident within the meaning of this policy and the conditions hereunto annexed; and such injuries shall occasion death within three months from the happening thereof. And if the assured shall sustain any personal injury which shall not be fatal, but which shall absolutely and totally disable him from the prosecution of his usual employment, then, on satisfactory proof of such injury, compensation shall be paid to him for a period not exceeding altogether twenty-six weeks, for any single accident, at the rate of fifteen dollars per week, so long as he shall be totally disabled as aforesaid in consequence of such injury.

"Provided always that this policy is granted upon the express condition that the declarations of the assured in his application for this insurance, which is hereby referred to and made a part of this contract, are true in all respects, and that if this policy or any renewal thereof has been or may be obtained through misrepresentation, fraud, or concealment, then this policy shall become absolutely void, and all
4 premiums paid in respect thereof be forfeited to the company.

"Provided always that no claim shall be made under this policy by the said assured in respect of any injury, unless the same shall be caused by some untoward and visible means, of which proof satisfactory to the company can be furnished, and this insurance shall not extend to any injury caused by or arising from natural disease, or by any

surgical operation, rendered necessary by disease, or to any death or injury caused by dueling or fighting, or other breach of the law on the part of the assured, or by suicide, whether felonious or otherwise, or by war or invasion, or happening while the assured is in a state of intoxication, or by his willfully exposing himself to any unnecessary danger or peril.

"Provided always that if the insured shall travel elsewhere than within the limits of the States lying east of the Rocky Mountains, or elsewhere than within the Territory of Nebraska, the two Canadas, New Brunswick, and Nova Scotia, or coastwise to ports within the limits aforesaid by any other than regular lines of passenger or mail
5 conveyances, without giving notice to the company, and paying such additional premium as may be required, (if the company shall agree to cover such risks,) then this policy shall become absolutely void.

"Provided always that all sums which may from time to time be paid, by way of compensation, to the said assured, by virtue of this policy, shall be accounted in diminution of the sum hereby issued, so that in case of subsequent injury, whether fatal or otherwise, during the continuance of this policy, the total amount to be paid by the said company shall not in any case exceed the principal sum hereby insured.

"This policy commences at 12 o'clock, meridian, on the 23d day of March, eighteen hundred and sixty-six, and shall not be valid until countersigned by the agent of said Travelers Insurance Company, at Montpelier, Vermont, and is subject to the following conditions:

"1. For the purpose of indemnification, due notice shall be given to the secretary of the company, or the agent writing this policy, by the party assured, of all changes of residence, occupation, or name, whether by marriage or otherwise.

6 "2d. In the event of injury, within the meaning of this policy, occuring to the assured, he, or, in case of his death, his legal representatives, shall within ninety days thereafter give notice, in writing, thereof to *to* the company, at their office in Hartford, Connecticut, or to the agent writing this policy, together with a statement of the , occupation, and ad'ress of the assured, with full particulars of the accident or injury.

"3. No compensation shall be payable under this policy unless any medical advisor of the company shall be allowed to examine the person of the assured, on the occasion of any alleged injury within the meaning of this policy, when and so often as the same may reasonably be required on behalf of this company, or unless such evidence as the company may from time to time require shall be furnished within the the space of thirty days afterward in writing, as to any alleged accident or injury on the ground of which a claim shall have been made against the company.

"4. The risk taken on any one life is limited to $10,000, and no second insurance, whether affected by one of the company' railway insurance ticket or otherwise, which, together with the same for the time
7 being, insured by this policy, shall exceed that amount, shall hold good as to surplus insured above $10,000.

"In witness whereof The Travelers Insurance Company have caused these presents to be signed by their president and attested by their secretary, at their office in the city of Hartford.

"Attest:

"J. G. BATTERSON, *President.*
"RODNEY DENNIS, *Secretary.*

"Countersigned at Montpelier, this 23d day of March, A. D. 1866.
"S. L. HOWE, *Agent.*"

And the plaintiff avers that the said John B. Seaver, at Morristown, in said Lamoille County, on the 19th day of October, A. D. 1866, was by an accident fatally injured, so that he died from the said injury, at said Morristown, on the 21st day of October, A. D. 1866; and the plaintiff further avers that the declaration of said Seaver, in his application for the said insurance, was true in all respects; and the plaintiff further avers that the death of the said John B. Seaver, as aforesaid, was not caused by any of the means, and did not occur any of the circumstances mentioned in the second provisos in said policy.

8 And the plaintiff further avers that said policy never became void by virtue of the third proviso in said policy.

And the plaintiff further avers that the said defendant was duly notified of the death of the said Seaver, by the plaintiff, at Montpelier, aforesaid, to wit, on the 24th day of October, A. D. 1866.

And the plaintiff further avers that the said Seaver, in his lifetime, in all things confined himself to, observed, performed, fulfilled, and kept all things in the said policy of insurance and the provisos, conditions, limitations, and stipulations therein contained, on his part to be observed and performed according to the form, force, and effect of the said policy, and so has the said plaintiff, since the death of the said Seaver, complied with all the terms of said policy by her or the legal representatives of said Seaver to be observed and kept.

Yet the said defendant', through often requested, have not regarded their said promise and undertaking in said policy contained, but have neglected and refused to pay to the plaintiff or to the legal representatives of said Seaver said sum of three thousand dollars.

9 Also in a further plea of the case, for that the defendants, at Montpelier, aforesaid, on the 23d day of March, A. D. 1866, in consideration of the sum of eighteen dollars by John B. Seaver then and there paid to the defendants, did make, execute, and deliver to the said John B. Seaver, for the benefit of the plaintiff, a certain other policy of insurance, in the words and figures following, viz:

"In consideration of eighteen dollars, the receipt of which is hereby acknowledged, The Travelers' Insurance Company do hereby insure John B. Seaver against the loss of life or personal injury, in the sum of three thousand dollars, to be paid to Elizabeth W. Seaver, or his legal representatives, within ninety days after sufficient proof that the assured at any time, within twelve months after the date of this policy, shall have sustained personal injury caused by any accident within the meaning of this policy and the conditions hereunto annexed, and such injuries shall occasion death within three months from the happening thereof, and if the assured shall sustain any personal injury which shall not be fatal, but which shall absolutely and totally disable

10 him from the prosecution of his usual employment, then on satisfactory proof of such injury, compensation shall be paid to him *to him* for a period not exceeding altogether twenty-six weeks; for any single accident, at the rate of fifteen dollars per week, so long as he shall be totally disabled as aforesaid, in consequence of such injury:

"Provided always that this policy is granted upon the express conditions that the declaration of the assured, in his application for this insurance, which is hereby referred to and made part of this contract, *are* true in all respects; and that this policy, or any renewal thereof, has been or may be obtained through misrepresentation, fraud, or conceal-

ment, then this policy shall become absolutely void, and all premiums paid in respect thereof to be forfeited to the company.

"Provided always that no claim shall be made, under this policy, by the said assured in respect of any injury, unless the same shall be caused by some outward and visible means, of which proof satisfactory to the company can be furnished, and this insurance shall not extend to any injury caused by, or arising from, natural diseases, or by any surgical operation rendered necessary by disease, or to any death
11 or injury caused by dueling or fighting, or other breach of the law on the part of the assured, or by suicide, whether felonious or otherwise, or by war or invasion, or happening while the assured is in a state of intoxication, or by his willfully exposing himself to any unnecessary danger or peril.

"Provided always that if the insured shall travel elsewhere than within the limits of the States lying east of the Rocky Mountains, or elsewhere than within the Territory of Nebraska, the two Canadas, New Brunswick, and Nova Scotia, or coastwise to ports within the limits aforesaid by any other than regular lines of passenger or mail conveyances, without giving notice to the company and paying such additional premium as may be required, (if the company shall agree to cover such risk,) then this policy shall become absolutely void.

"Provided always that all sums which may from time to time be paid by way of compensation to the said assured by virtue of this policy, shall be accounted in diminution of the same hereby insured, so that in case of subsequent injury, whether fatal or otherwise, during the continuance of this policy, the total amount to be paid by the said
12 company shall not in any case exceed the principal sum hereby insured.

"This policy commences 12 o'clock meridian on the 23d day of March, eighteen hundred & sixty six, and shall not be valid until countersigned by the agent of said Travelers Insurance Company at Montpelier, Vermont, and is subject to the following conditions:

"1st. For the purpose of identification, due notice shall be given to the secretary of the company, or the agent writing this policy, by the party assured, of all changes of residence, occupation, or name, whether of marriage or otherwise.

"2d. In the event of injury within the meaning of this policy occurring to the assured, he, or, in case of his death, his legal representatives, shall, within ninety days thereafter, give notice in writing thereof to the company, at their office in Hartford, Connecticut, or to the agent writing this policy, together with a statement of the Christian , occupation, and ad'ress of the assured, with full particulars of the accident or injury.

"3d. No compensation shall be payable under this policy un-
13 less any medical adviser of the company shall be allowed to examine the person of the assured on the occasion of any alleged injury within the meaning of this policy, when and so often as the same may reasonably be required on behalf of the company, or unless such evidence as the company may from time to time require shall be furnished within the space of thirty days after demand, in writing, as to any alleged accident or injury, on the ground of which a claim shall have been made against the company.

"4th. The risk taken on any one life is limited to $10,000, and no second insurance, whether effected by one of the company's railway insurance tickets or otherwise, which together with the sum for the

times being insured by this policy shall exceed that amount, shall hold good as to the surplus insured above $10,000.

"In witness whereof, the Travelers Insurance Company have caused these presents to be signed by their president and attested by their secretary, at their office in the city of Hartford.

"Attest: "RODNEY DENIS, *Secretary.*
"J. G. BATTERSON, *President.*

"Countersigned at Montpelier this 23d day of March, A. D. 1866.
"S. L. HOWE, *Agent.*"

14 And thereupon, afterwards, to wit: on the 23d day of March, at Montpelier aforesaid, in consideration that the said John B. Seaver, at the special instance and request of the defendant, had then and there paid to *to* the defendants the sum of eighteen dollars, the defendant then and there undertook and faithfully promised the plaintiff that it would become and be an assurer to the plaintiff of the said sum of three thousand dollars upon the life of the said John B. Seaver, according to the terms and conditions of said policy.

And the plaintiff avers that the said John B. Seaver afterwards, to wit, on the 19th day of October, A. D. 1866, at Morristown, in said Lamoille County, was by an accident thrown from his carriage, in which he was riding and driving, and thereby fatally injured, so that he died from said injuries at said Morristown, on the 21st day of October, A. D. 1866.

And the plaintiff further avers that the declarations of said John B. Seaver, in his application for said insurance, *was* true in all respects, and that said policy was not obtained through misrepresentation,

14 fraud, or concealment; that the death of said John B. Seaver was caused by outward and visible means, of which proof satisfactory to the defendants could be and was furnished to the defendants by the plaintiff, and the said injury and death, or either of them, was not caused by nor arose from natural disease, nor any surgical operation rendered necessary by disease, nor by dueling or fighting, or other breach of the law on the part of the said John B. Seaver, or by suicide, whether felonious or otherwise, or by war or invasion; nor did said injury and death, or either of them, happen while the said John B. Seaver was in a state of intoxication, nor by his willfully exposing himself to any unnecessary danger or peril.

And the plaintiff further avers that the said John B. Seaver did not, after the execution and delivery to him, by the defendants, of said policy, to wit: on the 23d day of March, A. D. 1866, travel elsewhere than within the limits of the States lying east of the Rocky Mountains, the Territory of Nebraska, the two Canadas, New Brunswick, and Nova Scotia, or coastwise to parts within the limits af's'd by any other than regular lines of passenger or mail conveyance.

16 And the plaintiff further avers that the defendant was duly notified and furnished with sufficient proof of the death of said John B. Seaver, in accordance with the 2d condition of said policy, at Montpelier af's'd, within ninety days thereafter, to wit: on the 24th day of October, A. D. 1866.

And the plaintiff avers that, at the time of the execution and delivery of the said policy by the defendant to the said John B. Seaver, and ever thereafterwards to the time of his death and the date of this writ, she, the said plaintiff, was interested in the life of the said John B. Seaver to the amount of three thousand dollars.

Yet the defendant, though requested, has not paid to the plaintiff said sum of three thousand dollars, or any part thereof, but so to do has wholly neglected and refused, to the damage of the plaintiff four thousand dollars, for the recovery of which, with just costs, the plaintiff brings suit. Fail not, but make service and return according to law.

Dated at Stowe, in the county of Lamoille, the 17th day of
17 October, in the year of our Lord one thousand eight hundred and sixty-seven.

JOHN WEST, *Justice Peace.*

H. D. Powers recognized to defendant in the sum of one hundred dollars as surety for costs of prosecution, as the law directs.

Before me,

JOHN WEST,
Justice Peace.

BENNINGTON COUNTY, *ss:*

BENNINGTON, *Nov'r* 1, 1867.

I then served this writ by giving John V. Hall, the attorney of Howard, appointed by the def't, in pursuance of the provisions of chapter 87 of the general statutes of Vermont, a true and attested copy of this writ, with my return herein thereon endorsed.

Attest:

A. DARIWELL, *Dept. Sh'ff.*

Fees: Travel 172 miles, 17.20; 1 copy, 10.00—27.20. Ch'g'd Powers & Gleed.

18 ELIZABETH W. SEAVER
vs.
TRAVELERS INSURANCE COMPANY.

To the honorable county court now in session:

Your petitioner respectfully shows that it is a corporation created by and under the authority of the State of Connecticut, one of the United States of America, and is wholly located in the State of Connecticut, and is a citizen thereof within the meaning of the act of Congress providing for the removal of suits from State courts to the circuit courts of the United States, & that the above-named suit is brought by Elizabeth W. Seaver, a citizen & resident of the State of Vermont, one of the United States of America, and that she demands a sum exceeding the sum of five hundred dollars, exclusive of cost, as by her writ now here in court will appear.

Wherefore your petitioner prays that the cause may be removed to the circuit court next to be holden within and for the district of Vermont, agreeably to the laws of Congress in that behalf provided, & it hereby offers to give such security that said cause shall be en-
19 tered in said court as provided by law, and in such sum within the meaning of the act of Congress as this court may direct, and to enter such special bail therein as may be required.

TRAVELERS INSURANCE COMPANY,
By DEWEY & NOBLE, *Its Atty's.*

Filed December 4, 1867.

L. S. SMALL, *Clerk.*

Know all men by these presents that we, Julian H. Dewey and Guy C. Noble, of St. Albans, in the county of Franklin, and State of Vermont, in consideration of one dollar, are held and firmly bound unto Elizabeth W. Seaver, of Stowe, in the county of Lamoille and State of Vermont, in the penal sum of five thousand dollars, for which payment, well and truly to be made, we hereby bind ourselves and each of us, our heirs, executors, and assigns firmly by these presents.

In witness whereof we hereto set our hands and seals this 2d day of December, A. D. 1867.

The condition of this obligation is such that whereas the above-named Elizabeth W. Seaver, of Stowe, in the county of Lamoille & State of Vermont, one of the United States of America, brought
20 her suit against The Travelers Insurance Company, a corporation chartered by and under the authority of the State of Connecticut, one of the United States of America, demanding in damages the sum of four thousand dollars, and the said company having filed its petition to have said cause removed to the circuit court of the United States next to be holden within and for the district of Vermont af's'd.

Now if the said company shall duly enter said cause in said court, and enter such special bail there as may be ordered by the court agreeably to the acts of Congress in that behalf, then this obligation to be void; otherwise to be and remain in full force and virtue.

JULIAN H. DEWEY. [L. S.]
GUY C. NOBLE. [L. S.]

Filed June 12, 1868.

L. S. SMALL, *Clerk.*

Lamoille County court, May term, 1868.

ELIZABETH W. SEAVER
vs.
TRAVELERS INSURANCE COMPANY.

Whereupon, on the reading of the petition of the defendants
21 and the filing of the bond in the above-entitled cause, it is ordered that said cause be removed, pass to and be remitted before the circuit court of the United States, within and for the district of Vermont, to be held at Windsor, within and for said district of Vermont, on the 4th Tuesday of July, A. D. 1868, and that a transcript of the writ, declaration, and service thereof, the motion & proceedings thereon, and the bond filed, and the order of said county court thereon, be remitted before the said circuit court, at the term thereof to be holden at the time and place above-named.

WILLIAM C. WILSON,
Presiding Judge.

Filed June 12, 1868.

L. S. SMALL, *Clerk.*

Docket entry.

IN CASE OF ELIZABETH W. SEAVER
vs.
TRAVELERS INSURANCE COMPANY.
Powers & Gleed for pl'ff.
No. 96.
Dewey & Noble, for d'f'ts.

On policy of insurance. Ent. December term, 1867.

22 Def'ts' petition filed Dec. 4, 1867, at the time of entering their appearance. Case with the court until May term, 1868.
May term, 1868, def'ts' bond filed.
June 12, 1868, remanded to the circuit court, as per order of court on file as of June 12, 1868.

I, L. S. Small, clerk of Lamoille County court, hereby certify that the foregoing is a true transcript and copy of the writ, declaration, & officer's return thereon, the defendants' motion filed & proceedings thereon, the bond filed and order of the county court thereon, together with the docket minutes in the case of Elizabeth W. Seaver vs. Travelers Insurance Company, now pending in Lamoille County court, as examined by me this 20 day of July, A. D. 1868.
[L. S.] L. S. SMALL, *Clerk.*

Fees: $6.50; stamp, .05; postage, .09—$6.64.

[5-c't revenue stamp.]

23 And thereupon it was ordered by the court that the said cause be entered on the docket of the court, & it was so entered.

And, afterwards, the said cause was continued until the October term, A. D. 1868, of this court.

And, afterwards, at said October term, A. D. 1868, the said cause was continued until the July term, A. D. 1869, of this court.

And, afterwards, at said July term, A. D. 1869, the said cause was continued until the October term, A. D. 1869, of this court.

And, afterwards, at said October term, A. D. 1869, the said cause was continued until the February term, A. D. 1870, of this court.

And, afterwards, at said February term, A. D. 1870, the said cause came on for hearing before the Honorable David A. Smalley, district judge, and a jury, and after hearing the evidence for the plaintiff & defendant, the court ordered a verdict for the plaintiff.

And, afterwards, on the 1st day of July, A. D. 1870, the said defendant filed its motion for a new trial.

24 And, afterwards, at the July term, A. D. 1870, of this court, said motion came on for hearing before the Hon. Lewis B. Woodruff, circuit judge, and the Hon. David A. Smalley, district judge, and after full hearing & due consideration of said motion, it was ordered, decreed, and adjudged that the said judgment be set aside, and that a new trial be granted.
And the said cause was continued to the October term A. D. 1870, of this court.

And, afterwards, at said October term, A. D. 1870, said cause was continued until the February term, A. D. 1871, of this court.

And, afterwards, at said February term, A. D. 1871, of this court, said cause came on for hearing before the Hon. David A. Smalley, dis-

trict judge, and a jury, and after hearing the evidence & the arguments of counsel for the plaintiff & defendant, & the charge of the judge, the jury found a verdict for the plaintiff, which verdict was in the words & figures following:

25 *Verdict.*

U. S. circuit court, Vermont district. February term, 1871.

ELIZABETH W. SEAVER
vs.
THE TRAVELERS INS. CO.

In this cause the jury say that the defendant did assume and promise in manner and form as the plaintiff in his declaration hath alleged. They therefore find for the plaintiff the sum of 3,747.00 dollars damages.

N. BROWNELL, *Foreman.*

And the jury further find that, when the sulkey of Seaver came into collision with the sulkey of Gilman, Seaver jumped to the ground, and was entirely cleared from the sulkey, harness, and reins, upright and uninjured, & spoke to his horse to stop, and then started forward to get hold of the lines to stop him, and in that attempt was killed.

N. BROWNELL, *Foreman.*

26 And thereafter, on the 20th day of March, A. D. 1871, an order staying proceedings on said verdict was granted, which said order was in the words and figures following:

ELIZABETH SEAVER
vs.
THE TRAVELERS INSURANCE COMPANY.

United States circuit court, Vermont district. Feb'y term, 1871.

It is ordered in this cause, on motion of the defendants, that proceedings upon the verdict be stayed until 20 days from this date, to enable the defendants to prepare and have allowed a bill of exceptions and motion for new trial thereon.

Dated this 20th day of March, 1871.

D. A. SMALLEY, *Judge.*

E. J. PHELPS,
For Def'ts.

27 And thereafter, on the 10th day of April, A. D. 1871, a further order, staying proceedings on said verdict, was granted, which order was in the words & figures following:

United States circuit court, Vermont district. Feb'y term, 1871.

ELIZABETH SEAVER
vs.
TRAVELERS INS. CO.

In this cause proceedings on the verdict are further stayed, on motion

of the defendants, for 20 days from the expiration of the former stay granted herein.

Dated at Columbus this 10th day of July, 1871.

D. A. SMALLEY, *Judge.*

And afterwards, on the 5 day of May, A. D. 1871, the defendant presented its bill of exceptions to the Hon. David A. Smalley, one of the judges of this court, and the same was allowed by him, in the words and figures following:

28 United States circuit court, Vermont district.

ELIZABETH SEAVER
vs.
THE TRAVELERS INS. CO.

This was an action of assumpsit upon a policy of insurance, commenced originally by the plaintiff, who is a citizen of Vermont, in the State court of Vermont, and removed for trial to this court by the defendant, being a citizen of the State of Connecticut, under the provisions of the acts of Congress in such case made and provided.

It was tried upon the declaration, (which is referred to,) and the plea of the general issue, before the Hon. David A. Smalley, district judge, and a jury, at Burlington, at the Feb. term, 1871.

On trial the pl'ff gave in evidence the application of Jno. B. Seaver for insurance in the defendant' corporation, and a policy of accident-insurance issued thereon, the due execution of both papers being admitted. The same are as follows:

29 TRAVELERS INSURANCE COMPANY, HARTFORD, CONN.

Form of proposal for insurance against accidents.

Name: John B. Seaver.
Whose benefit: Elizabeth M. Seaver.
Age: Forty-one.
Profession or occupation: Livery-stable keeper.
Residence: Stowe, Vt.
State if you have paralysis or fits of any kind: Never.
Are you already insured in this co.; and if so, how much: No.
Class of insurance required; general accident or travelers' risk: General accident.
Whether ordinary or special risk: Ordinary.
Whether death only, compensation only, or both: Both.
Length of time: Twelve months.
Amount to be insured at death: Three thousand dollars.
Amount of weekly compensation not exceeding twenty-six weeks: Fifteen dollars.
Premium: Eighteen dollars.

Declaration.

I, J. B. Seaver, being desirous of affecting an insurance with The Travelers Insurance Company of Hartford, do hereby declare
30 that the above statement of my age and other particulars is true, and I hereby agree that this declaration shall be the basis of the

contract between me and The Travelers Insurance Company, and that I am willing to accept a policy for three thousand dollars, subject to the conditions prescribed by the company and to be expressed in the policy.

Dated the 23d day of March, 1866.

(Signed) J. B. SEAVER.

Witness:
ROGER BULKLEY.

Policy.

"In consideration of eighteen dollars, the receipt of which is hereby acknowledged, The Travelers Insurance Company do hereby insure John B. Seaver against loss of life or personal injury in the sum of three thousand dollars, to be paid to Elizabeth M. Seaver, or his legal representatives, within ninety days after sufficient proof that the assured, at any time within twelve months after the date of this policy, shall have sustained personal injury caused by any accident within the meaning of this policy and the conditions thereunto annexed, and such injury
31 shall occasion death within three months from the happening thereof; and if the assured shall sustain any personal injury which shall not be fatal, but which shall absolutely and *and* totally disable him from the prosecution of his usual employment, then, on satisfactory proof of such injury, compensation shall be paid to him for a period not exceeding altogether twenty-six weeks for any single accident, at the rate of fifteen dollars per week, so long as he shall be totally disabled as aforesaid in consequence of such injury:

"Provided always that this policy is granted upon the express conditions that the declarations of the assured in his application for this insurance, which is hereby referred to and made a part of this contract, are true in all respects; and that if this policy or any renewal thereof has been or may be obtained through misrepresentations, fraud, or concealment, then this policy shall become absolutely void, and all premiums paid in respect thereof be forfeited to the company.

"Provided always that no claim shall be made under this policy by the said assured in respect to any injury, unless the same shall
32 be caused by some outward or visible means, of which proof satisfactory to the company can be furnished; and this insurance shall not extend to any injury caused by or arising from natural disease, or by any surgical operation rendered necessary by disease, or to death or injury caused by duelling or fighting, or other breach of the law, on the part of the assured, or by suicide, whether felonious or otherwise, or by war or invasion, or happening while the assured is in a state of intoxication, or by his wilfully exposing himself to any unnecessary danger or peril.

"Provided always that if the insured shall travel elsewhere than within the limits of the States lying east of the Rocky Mountains, or elsewhere than within the Territory of Nebraska, the two Canadas, New Brunswick, and Nova Scotia, or coastwise to ports within the limits aforesaid, by any other than regular lines of passenger or mail conveyance, without giving notice to the company, and paying such additional premiums as may be required, if the company shall agree to cover such risks, then this policy shall become absolutely void.

33 "Provided always that all sums which may from time to time be paid by way of compensation to the said assured by virtue of this policy, shall be accounted in diminution of the sum hereby insured,

so that in case of subsequent injury, whether fatal or otherwise, during the continuance of this policy, the total amount to be paid by the said company shall not in any case exceed the principal sum hereby insured.

"This policy commences at 12 o'clock m., on the 23d day of March, A. D. 1866, and shall not be valid until countersigned by the agent of said Travelers Insurance Company at Montpelier, Vermont, and is subject to the following conditions:

"1st. For the purpose of identification, due notice shall be given to the secretary of the company, or the agent writing this policy, by the party assured, of all changes of residence, occupation, or name, whether by marriage or otherwise.

"2d. In the event of injury within the meaning of this policy, accruing to the insured, he, or, in case of his death, his legal representatives, shall, within ninety days thereafter, give notice, in writing, thereof to the company at their office in Hartford, Connecticut, or to the
34 agent writing this policy, together with the statement of the Christian, surname, and occupation and address of the assured, with full particulars of the accident or injury.

"3d. No compensation shall be payable under this policy, unless any medical adviser of the company shall be allowed to examine the person on the occasion of any alleged injury, when and so often as the same may reasonably be required on behalf of the company, or unless such evidence the company may from time to time require shall be furnished within the space of thirty days after demand in writing, as to any alleged accident or injury, on the ground of which the claim should have been made against the company.

"4th. The risk taken on any one life is limited to $10,000, and no second insurance, whether effected by one of the companie's railway insurance tickets or otherwise, which, together with the sum for the time being insured by this policy, shall exceed that amount, shall hold good as to the surplus insured above $10,000.

"In witness whereof The Travelers Insurance Company have
35 caused these presents to be signed by their president and attested by their secretary, at their office in the city of Hartford.

Attest: "J. G. BATTERSON,
"*President.*

"RODNEY DENNIS,
"*Secretary.*

"Countersigned at Montpelier this 23d day of March, A. D. 1866.
"S. L. HOWE, *Agent.*"

The plaintiff also read in evidence the 1st & 5th paragraphs of a stipulation between the parties, signed by their respective attorneys, and filed in the cause, which are as follows:

SEAVER
vs.
THE TRAVELERS INS. CO.

It is mutually agreed for the purpose of this trial—

1st. That John B. Seaver, named in the policy, died on the morning of Oct. 21, 1866, by reason of personal injury caused while upon the "Lieneville Trotting Park, on the 19th Oct. of the same year."

* * * * * * *

5th. That the pl'ff is the widow of the said John B. Seaver, and that

contract between me and The Travelers Insurance Company, and that I am willing to accept a policy for three thousand dollars, subject to the conditions prescribed by the company and to be expressed in the policy.

Dated the 23d day of March, 1866.

(Signed) J. B. SEAVER.

Witness:
ROGER BULKLEY.

Policy.

"In consideration of eighteen dollars, the receipt of which is hereby acknowledged, The Travelers Insurance Company do hereby insure John B. Seaver against loss of life or personal injury in the sum of three thousand dollars, to be paid to Elizabeth M. Seaver, or his legal representatives, within ninety days after sufficient proof that the assured, at any time within twelve months after the date of this policy, shall have sustained personal injury caused by any accident within the meaning of this policy and the conditions thereunto annexed, and such injury
31 shall occasion death within three months from the happening thereof; and if the assured shall sustain any personal injury which shall not be fatal, but which shall absolutely and *and* totally disable him from the prosecution of his usual employment, then, on satisfactory proof of such injury, compensation shall be paid to him for a period not exceeding altogether twenty-six weeks for any single accident, at the rate of fifteen dollars per week, so long as he shall be totally disabled as aforesaid in consequence of such injury:

"Provided always that this policy is granted upon the express conditions that the declarations of the assured in his application for this insurance, which is hereby referred to and made a part of this contract, are true in all respects; and that if this policy or any renewal thereof has been or may be obtained through misrepresentations, fraud, or concealment, then this policy shall become absolutely void, and all premiums paid in respect thereof be forfeited to the company.

"Provided always that no claim shall be made under this policy by the said assured in respect to any injury, unless the same shall
32 be caused by some outward or visible means, of which proof satisfactory to the company can be furnished; and this insurance shall not extend to any injury caused by or arising from natural disease, or by any surgical operation rendered necessary by disease, or to death or injury caused by duelling or fighting, or other breach of the law, on the part of the assured, or by suicide, whether felonious or otherwise, or by war or invasion, or happening while the assured is in a state of intoxication, or by his wilfully exposing himself to any unnecessary danger or peril.

"Provided always that if the insured shall travel elsewhere than within the limits of the States lying east of the Rocky Mountains, or elsewhere than within the Territory of Nebraska, the two Canadas, New Brunswick, and Nova Scotia, or coastwise to ports within the limits aforesaid, by any other than regular lines of passenger or mail conveyance, without giving notice to the company, and paying such additional premiums as may be required, if the company shall agree to cover such risks, then this policy shall become absolutely void.

33 "Provided always that all sums which may from time to time be paid by way of compensation to the said assured by virtue of this policy, shall be accounted in diminution of the sum hereby insured,

so that in case of subsequent injury, whether fatal or otherwise, during the continuance of this policy, the total amount to be paid by the said company shall not in any case exceed the principal sum hereby insured.

"This policy commences at 12 o'clock m., on the 23d day of March, A. D. 1866, and shall not be valid until countersigned by the agent of said Travelers Insurance Company at Montpelier, Vermont, and is subject to the following conditions:

"1st. For the purpose of identification, due notice shall be given to the secretary of the company, or the agent writing this policy, by the party assured, of all changes of residence, occupation, or name, whether by marriage or otherwise.

"2d. In the event of injury within the meaning of this policy, accruing to the insured, he, or, in case of his death, his legal representatives, shall, within ninety days thereafter, give notice, in writing, thereof to the company at their office in Hartford, Connecticut, or to the
34 agent writing this policy, together with the statement of the Christian, surname, and occupation and address of the assured, with full particulars of the accident or injury.

"3d. No compensation shall be payable under this policy, unless any medical adviser of the company shall be allowed to examine the person on the occasion of any alleged injury, when and so often as the same may reasonably be required on behalf of the company, or unless such evidence the company may from time to time require shall be furnished within the space of thirty days after demand in writing, as to any alleged accident or injury, on the ground of which the claim should have been made against the company.

"4th. The risk taken on any one life is limited to $10,000, and no second insurance, whether effected by one of the companie's railway insurance tickets or otherwise, which, together with the sum for the time being insured by this policy, shall exceed that amount, shall hold good as to the surplus insured above $10,000.

"In witness whereof The Travelers Insurance Company have
35 caused these presents to be signed by their president and attested by their secretary, at their office in the city of Hartford.

Attest: "J. G. BATTERSON,
"*President.*

"RODNEY DENNIS,
"*Secretary.*

"Countersigned at Montpelier this 23d day of March, A. D. 1866.
"S. L. HOWE, *Agent.*"

The plaintiff also read in evidence the 1st & 5th paragraphs of a stipulation between the parties, signed by their respective attorneys, and filed in the cause, which are as follows:

SEAVER
vs.
THE TRAVELERS INS. CO.

It is mutually agreed for the purpose of this trial—

1st. That John B. Seaver, named in the policy, died on the morning of Oct. 21, 1866, by reason of personal injury caused while upon the "Lieneville Trotting Park, on the 19th Oct. of the same year."

* * * * * * *

5th. That the pl'ff is the widow of the said John B. Seaver, and that

she seasonably made and furnished the company such formal proof of her claim in this case as the policy required.

36 The plaintiff then further gave evidence tending to show that on the 19th Octob', 1866, at Mimsville, Vermont, said John B. Seaver was engaged in driving a trotting race or match on a trotting-course; that he drove on that occasion a mare named "Mansfield Belle," harnessed to a sulkey, and owned by one Thomas F. Benner; that two other horses in sulkies were driven in competition in the same race—one of them named Northern Light, owned by J. A. Dwinell & C. R. Paige, was driven by one Gilmore.

That the track was in form like the link of a chain, and one-half a mile around it; on the first heat, and soon after leaving the judge's stand, Seaver, having the inside of the track, and his horse and Gilmore's being nearly abreast, Seaver's mare broke and fell back, and Gilmore's horse got a little ahead; that Gilmore thereupon reined in towards the inside of the track apparently to get the inside track, his team being then about half its length ahead of Seaver's mare; that Seaver's mare at that moment regained her speed, and, gaining on the other horse, the sulkies came in collision.

37 The wheel of Seaver, passing over the near wheel of Gilmore, when Seaver instantly jumped from his carriage, and struck upon the grass ground off the track, and upon his feet, uninjured & entirely free from his team, and some two or three feet from his carriage; that if he had remained standing where he struck, he would have received no injury; that he instantly spoke to his mare, and the mare slackened her speed, and Seaver started to catch her, and, with that purpose, ran a distance of some twenty feet by her side, trying to get hold of the reins to stop her; that the reins were hanging loosely across the axle-tree of the carriage; that when Seaver ran the distance as aforesaid, and while thus running with one hand either hold of or grasping for the reins, the mare turned in upon the grass ground and towards Seaver, throwing him down, when in some way he became entangled in the reins, and was dragged along a few feet until his head struck either a stone or a stick of timber with great velocity; that Seaver was immediately taken up insensible and carried into the house, & physi-

38 cians called; that he died the next morning from the injury. The plaintiff's evidence further tended to show that by the rules of the trotting course Gilmore had not the right to attempt to take the inside track until he had passed Seaver a distance equal to the length of Seaver's team.

The defendant gave in evidence section nine of chapter one hundred and nineteen of the general statutes of Vermont, which are as follows:

All racing, running, trotting, or pacing of any horse or horse kind for any bet or wager of money or other valuable thing, or for any purse or stake made, is hereby declared a misdemeanor, and the parties, contrivers, aiders and abettors thereof, shall pay a fine not exceeding five hundred dollars.

And it was conceded that said sections were in force at the time of the execution of the policy aforesaid, and ever since. The defendant also read the 2d, 3d, and 4th sections of the same stipulation between the parties, from which the plaintiff had read as aforesaid, which are as follows:

2d. That the said John B. Seaver was, at the time of the col-

39 lision with the team with which he was in competition, as shown

by the proof, employed to drive said horse in a race for a purse of sixty dollars, in competition with two other horses.

3d. That the said race was gotten up and generally advertised by hand-bills and otherwise, under the auspices of the "Morrisville Trotting Club," and that this particular purse and two others for thirty and one hundred dollars respectively were so advertised to be trotted for on the same day, and upon that day were trotted for, and this particular purse for sixty dollars was awarded and paid to J. A. Durnwell and C. R. Page, the owners of one of the two horses that were competing with the horse that Seaver drove.

4th. That the purses were made up from the admission-fees to the trotting park, (25 cents each,) paid by the spectators, and also from the entrance-fees paid by the owners of the horses entered for the race, and in this race the owner of the horse that Seaver drove paid an entrance fee of six dollars, as did each of the two competators aforesaid.

This stipulation not to prejudice the plaintiff's right to submit the facts of this case to the consideration of the jury.

40 The defendants further gave evidence, tending to show the circumstances attending the death of Seaver; this evidence did not vary in any material particular from that given by the plaintiff on the same subject as above stated, except that evidence for defendant tended to show that Seaver was actually entangled in the reins when he jumped from the vehicle, and was thereby thrown down after striking on his feet.

The defendants also gave some evidence, tending to prove that the horse driven by Seaver was high-spirited, and very fast animal.

Also evidence tending to show the construction of the sulkey used by Seaver, and also evidence that the turn of the track at the place of the accident was shorter than it should have been.

The plaintiff in reply introduced evidence tending to show that the mare was perfectly kind, safe, and gentle to drive, and also read in evidence a written paragraph from a stipulation on file in the case, and which was as follows:

41 The pl'ff's evidence further tended to prove that the sulkey which Seaver used was a suitable, proper, safe one; that the track was such as was often used, & much in the shape that the best ones in the country were made.

Upon the evidence, the counsel for the defendant made the following points, and requested the court to charge the jury accordingly:

1st. That upon the evidence in the case the plaintiff is not entitled to recover, and a non-suit should be ordered, and a verdict directed for the defendant.

42 2d. That the evidence in this case does tend to show and does show, 1st, that the death of the insured was caused by a breach of the law on his part; 2d, that the driving of the horse by the insured on the occasion when he was killed was the wilful exposure of himself to an unnecessary danger or peril within the meaning of the provision of the policy relied on by the defendant.

3d. That the evidence does not tend show any intention on the part of Gilmore to injure Seaver, nor even to cause a collision between the vehicles, and that mere carelessness, recklessness, or violation of the rules of the race on the part of Gilmore in driving the race is not enough, upon the evidence, to relieve the case from the defence that the death of the insured was caused by a breach of the law on his part, and does not enable the plaintiff to recover in this action.

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by the proof, employed to drive said horse in a race for a purse of sixty dollars, in competition with two other horses.

3d. That the said race was gotten up and generally advertised by hand-bills and otherwise, under the auspices of the "Morrisville Trotting Club," and that this particular purse and two others for thirty and one hundred dollars respectively were so advertised to be trotted for on the same day, and upon that day were trotted for, and this particular purse for sixty dollars was awarded and paid to J. A. Durnwell and C. R. Page, the owners of one of the two horses that were competing with the horse that Seaver drove.

4th. That the purses were made up from the admission-fees to the trotting park, (25 cents each,) paid by the spectators, and also from the entrance-fees paid by the owners of the horses entered for the race, and in this race the owner of the horse that Seaver drove paid an entrance fee of six dollars, as did each of the two competators aforesaid.

This stipulation not to prejudice the plaintiff's right to submit the facts of this case to the consideration of the jury.

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Also evidence tending to show the construction of the sulkey used by Seaver, and also evidence that the turn of the track at the place of the accident was shorter than it should have been.

The plaintiff in reply introduced evidence tending to show that the mare was perfectly kind, safe, and gentle to drive, and also read in evidence a written paragraph from a stipulation on file in the case, and which was as follows:

41 The pl'ffs evidence further tended to prove that the sulkey which Seaver used was a suitable, proper, safe one; that the track was such as was often used, & much in the shape that the best ones in the country were made.

Upon the evidence, the counsel for the defendant made the following points, and requested the court to charge the jury accordingly:

1st. That upon the evidence in the case the plaintiff is not entitled to recover, and a non-suit should be ordered, and a verdict directed for the defendant.

42 2d. That the evidence in this case does tend to show and does show, 1st, that the death of the insured was caused by a breach of the law on his part; 2d, that the driving of the horse by the insured on the occasion when he was killed was the wilful exposure of himself to an unnecessary danger or peril within the meaning of the provision of the policy relied on by the defendant.

3d. That the evidence does not tend show any intention on the part of Gilmore to injure Seaver, nor even to cause a collision between the vehicles, and that mere carelessness, recklessness, or violation of the rules of the race on the part of Gilmore in driving the race is not enough, upon the evidence, to relieve the case from the defence that the death of the insured was caused by a breach of the law on his part, and does not enable the plaintiff to recover in this action.

4. That even if Gilmore, upon the evidence in this case, can be found to have willfully produced the collision of the vehicles, that could not obviate the defense set up, nor entitle the plaintiff to recover.

43 The court declined so to charge and *and* instruct the jury, except so far as hereinafter stated, and did charge them substantially as follows:

That the plaintiff, by showing the policy of insurance, the execution of which was admitted, the death of the insured within the life of the policy, and the preliminary proofs required, became entitled to recover unless the case was brought within the defense set up by the defendant and based upon the two clauses in the policy that had been referred to. That the burden of proof was upon the defendant to establish the defense, and to show that the case came within the meaning of the clauses relied on.

That, for the purposes of this trial, the jury were to regard the trotting race in which the insured was engaged when he jumped from his sulkey & was killed as a breach of the law within the meaning of the clause above mentioned.

That the jury were, therefore, to inquire whether the death of the insured was occasioned by the breach of the law; that this was a question for the jury.

44 That if the jury should find that Seaver was killed by the race itself, by an ordinary accident of the race, so that the race was the proximate cause of the death, the plaintiff could not recover, but if the jury should find that Gilmore turned his horse in intentionally & tortuously, with the purpose of winning the race at all hazards, whether he should crowd Seaver from the track or not, then that the conduct of Gilmore and not the race would be the proximate cause of the death, and the plaintiff would be entitled to recover.

That the plaintiff's evidence showed that Gilmore, turning in as he did, was in violation of the rules of the race; that a man was usually to be taken as intending the natural & necessary consequences of his own acts. And that if the jury were of opinion that Gilmore drove, as he did tortuously, & with the intention of winning the race in any event, even though in his so doing he should crowd Seaver from the track & upset him, & that such driving caused the death of Seaver, then the jury should find for the pl'ff.

45 The jury were told that if the death of the insured was caused by the willful exposure of himself to an unnecessary danger or peril within the meaning of the other clause in the policy relied on by the defendants, the plaintiff would not be entitled to recover.

Upon this part of the case, it was to be considered, however, that the language of this clause must be taken most strongly against the defendant, because used in their policy, and for the purpose of inducing parties to take policies:

It was also further to be considered how ordinary people in the part of the country where the insured reside, in view of the state of things then existing, the frequency of such races, and the way in which such matches are usually regulated, would naturally understand such language, whether as precluding such driving or not.

The jury should also consider the nature of the busiuess of the insured, as set forth in the application, and therefore known to the defendant, that of livery-stable keeper, which of course embraced the management and driving of horses.

That the question was not what construction would be given to the

language at Hartford, where the def'ts' company is located, but, in view of all the circumstances and conditions above alluded to, whether intelligent, fair-minded people in the vicinity of the insured where
46 the contract was made, would regard it as excluding the driving of such a race, and, if not, that the case would not come within the proviso of that clause in the policy, and the plaintiff would, so far as that is concerned, be entitled to recover.

The jury were directed to return a special finding on certain questions of fact submitted to them by the court as per verdict hereinafter stated.

The jury returned the following verdict and answers to the questions specially submitted:

"In this cause the jury say that defendant did assume and promise in manner & form as the plaintiff in his declaration hath alleged; they therefore find for the plaintiff the sum of 3,745.00 dollars damages.

"N. BROWNELL, *Foreman.*

"And the jury further find, that when the sulkey of Seaver came into collision with the sulkey of Gilmer, Seaver jumped to the ground and was entirely clear from the sulkey, harness, & reins, upright and uninjured, and spoke to his horse to stop, and then started
47 forward to get hold of the lines to stop him, and in that attempt was killed.

"N. BROWNELL, *Foreman.*"

To the refusal of the court to charge and rule in accordance with the defendant's points and requests, and to the charge of the court as aforesaid upon the subject of said points and requests, the defendants duly excepted.

Exceptions allowed and certified, and ordered to be filed.

D. A. SMALLEY, *Judge.*

And they were ordered to be filed, and were filed on said 5 day of May, A. D. 1871.

And thereupon on said 5 day of May, A. D. 1871, said defendant moved for a new trial, which motion was denied by the court, and judgment on the verdict for the plaintiff was rendered, and, on motion of the defendant, the execution was stayed.

And on the 12 day of May, A. D. 1871, the defendant prayed out a writ of error to the Supreme Court of the United States, and the same was duly allowed, and filed on said 12 day of May, A. D. 1871.

48 And on the 12 day of May, A. D. 1871, the defendant presented a bond in the words and figures following:

Circuit court of the United States for the district of Vermont.

ELIZABETH SEAVER
v.
THE TRAVELERS INSURANCE COMPANY.

Know all men by these presents, that we, the Travelers Insurance Company, of Hartford, Connecticut as principal, and Marshall Jewell, of said Hartford, and William L. Strong, of Burlington, in the State of Vermont, are held and firmly bound unto Elizabeth Seaver in the sum

of five thousand dollars, to be paid to the said Elizabeth Seaver, her executors or administrators.

To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Signed and sealed with our seals, and dated this 9th day of May, 1871.

49 Whereas the above-named Travelers Insurance Company hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the United States circuit court for the district of Vermont, at the February term, 1871, to wit, on the 5th day of May, 1871, within said term, holden at Burlington, within and for said district of Vermont:

Now, therefore, the condition of this obligation is such, that if the above-named Travelers' Insurance Company shall prosecute its said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE TRAVELERS INSURANCE COMPANY,

[L. S.] By G. F. DAVIS, *Vice-President.*

MARSHALL JEWELL. [L. S.]

W. L. STRONG. [L. S.]

Signed, sealed, and delivered, the day and year above written, in presence of—

CHA'S E. WILSON, as to signatures of G. F. Davis & Marshall Jewell.

T. S. PECK, witness to signature of W. L. Strong.

50 Approved & ordered to be filed.

D. A. SMALLEY, *Judge.*

MAY 12, 1871.

And the same was duly approved and ordered to be filed, and was filed.

And on the 12 day of May, A. D. 1871, a citation was duly issued out of this court, which citation is as follows:

51 UNITED STATES OF AMERICA,

District of Vermont, ss:

To Elizabeth Seaver, of Stowe, in the State of Vermont, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Vermont, wherein The Travellers Insurance Company, of Hartford, Connecticut, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 12th day of May, in the year of our Lord one thousand eight hundred and seventy-one.

D. A. SMALLEY, *Judge.*

52 (Indorsed:) U. S. Sup. Court. The Travellers Insurance Co., pl'ff in error, vs. Elizabeth Seaver, def't in error. Citation. E. T. Phelps, att'y for pl'ff in error.

53 And on the said 12 of May, 1871, the said defendant duly filed in this court, for the use of the plaintiff in this cause, a true copy of the writ of error and citation hereinbefore referred to.

And, on the 1st day of June, A. D. 1871, the citation hereinbefore referred to was returned to this court, with an affidavit of service, in the words and figures following:

United States Supreme Court.

THE TRAVELERS INSURANCE COMPANY, PL'FFS in error,
vs.
ELIZABETH SEAVER, DEF'T IN ERROR.

I, Noble B. Flanagan, of Burlington, in the State of Vermont, on oath say that I am a deputy marshal of the United States for the district of Vermont, and have been such deputy marshal for more than one year last past; that on the 16 day of May, 1871, at Stowe, in said district, I delivered to the said Elizabeth Seaver, defendant
54 in error, a true copy of the original citation in this cause hereto annexed, duly attested by me, and by the clerk of the United States circuit court for said district. And, on the 16th day of May, 1871, at Mimsville, in said district, I caused to be delivered to Henry H. Powers, the attorney of record for said Elizabeth Seaver, in said cause, a like true copy of said citation, in like manner duly attested, having at the time of both said services said original citation in my hands for service.

Attest:

N. B. FLANAGAN,
Deputy U. S. Marshal.

Fees: 60 miles travel, 3.60; 2 services, 4.00—$7.60.

DISTRICT OF VERMONT, *ss:*

At Burlington, in said district, this 1st day of June, 1871, personally appeared Noble B. Flanagan, deputy marshal, to me known, and made oath that the foregoing affidavit by him in my presence subscribed is true.

Before me.

B. B. SMALLEY,
Clerk U. S. Circuit Court, District of Vermont.

(Indorsement on cover:) No. 436. The Travellers' Insurance Company, plaintiff in error, vs. Elizabeth Seaver. Vermont C. C. U. S. Filed 29th November, 1871.

SUPREME COURT

OF THE

UNITED STATES.

No. 34.

THE TRAVELLER'S INSURANCE COMPANY,

PLAINTIFF IN ERROR,

VS.

ELIZABETH SEAVER,

DEFENDANT IN ERROR.

Brief for the Plaintiff in Error.

E. J. PHELPS,
Counsel.

SUPREME COURT

OF THE

UNITED STATES.

No. 34.

THE TRAVELLER'S INSURANCE COMPANY,

PLAINTIFF IN ERROR,

VS.

ELIZABETH SEAVER,

DEFENDANT IN ERROR.

Brief for the Plaintiff in Error.

E. J. PHELPS,
Counsel.

"Provided always that * * * this insurance shall "not extend to * * * any death or injury caused by "duelling or fighting, *or other breach of the law on the part "of the assured*, * * * or happening while the as- "sured is in a state of intoxication, or *by his wilfully ex- "posing himself to any unnecessary danger or peril.*"

Record, folio 4, 5.

The assured was accidentally killed, while driving a public trotting match at Morrisville, Vermont, for a purse or stake, by a collision of his vehicle with that of one of his competitors.

Record, folio 36, 38, *and folio* 39.

A statute of Vermont, (conceded to have been in force at the time of the execution of the policy and ever since,) is as follows:

Chap. 119, *Sec.* 9. "All racing, running, trotting, or "pacing, of any horse or horse kind, for any bet or wager of "money, or other valuable thing, or for any purse or stake "made, is hereby declared a misdemeanor, and the parties, "contrivers, aiders, and abettors thereof, shall pay a fine not "exceeding five hundred dollars."

Record, folio 38, 39.

The assured and the defendant in error resided in Vermont at the time of the execution of the policy, and at the time of the accident, and the policy was there executed.

Upon these facts it was claimed by the plaintiff in error on the trial, and the court was requested to rule, that the plaintiff was not entitled to recover, and that a non-suit or a verdict for the defendant should be directed, upon the ground,

1. That the death of the assured was caused by a breach of the law on his part.

2. And by the wilful exposure of himself to an unnecessary danger or peril.

Record, folio 42.

The court refused so to charge or rule, but did charge *in substance*—,

That the trotting match was a breach of the law within the meaning of the policy.

But that if the jury should find that the death of the assured was occasioned by the reckless driving of his competitor, (Gilmore,) in violation of the rules of the race, and with the intention of winning the race at all hazards, even though he crowded assured off the track, then the death was not caused by the race, but by the conduct of Gilmore, and they should find for the plaintiff.

That whether the driving of the race was a wilful exposure to an unnecessary danger, was for the jury to determine. That the language of this clause should be taken most strongly against the defendants, as being used in their policy, and for the purpose of inducing parties to take policies. And if intelligent fair-minded people in the vicinity of the insured, would not regard it as excluding the driving of such a race, in view of the state of things then existing, the frequency of such matches, and the manner in which they are usually regu-

lated, then the case would not be within that proviso, and the plaintiff would be entitled to recover.

Record, folio 43, 46.

The jury found for the plaintiff $3,745.00, and the defendfendants, having duly excepted to the charge upon the points involved in their requests, and a motion for a new trial on the exceptions having been denied, bring error.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns and will rely upon, as errors shown upon the record in this case:

1. The refusal of the court to direct a non-suit or verdict for the defendant, as requested.

2. The instruction by the court to the jury, on the question whether the death of the assured was caused by a breach of the law.

Said instruction being as follows:

"That the jury were therefore to inquire whether the death "of the insured was occasioned by the breach of the law; that "this was a question for the jury.

"That if the jury should find that insured was killed by the "race itself, by an ordinary accident of the race, so that the "race was the proximate cause of the death, the plaintiff could "not recover, but if the jury should find that Gilmore turned "his horse intentionally and tortiously, with the purpose of "winning the race at all hazards, whether he should crowd "Seaver from the track or not, then that the conduct of Gil-

"more, and not the race, would be the proximate cause of the "death, and the plaintiff would be entitled to recover."

"That the plaintiff's evidence showed that Gilmore's turning "in as he he did, was in violation of the rules of the race; that "a man was usually to be taken as intending the natural and "necessary consequence of his acts. And that if the jury "were of opinion that Gilmore drove as he did tortiously, and "with the intention of winning the race in any event, even "though in his so doing he should crowd Seaver from the "track and upset him, and that such driving caused the death "of Seaver, then the jury should find for the plaintiff."

Record, folio 43, 44.

3. The instruction by the court to the jury, on the question whether the death of the assured was caused by the wilful exposure of himself to an unnecessary danger or peril.

Said instruction being as follows:

"That if the death of the insured was caused by the wilful "exposure of himself to an unnecessary danger or peril within "the meaning of the other clause in the policy relied on by the "defendants, the plaintiff would not be entitled to recover."

"Upon this point of the case it was to be considered how-"ever, that the language of this clause must be taken most "strongly against the defendant, because used in their policy, "and for the purpose of inducing parties to take policies."

"It was also further to be considered, how ordinary people "in the part of the country where the insured resided, in view "of the state of things then existing, the frequency of such "races, and the way in which such matches are usually regu-

It was not sustained by the court, and does violence to common sense.

The plain terms of this policy are not to be evaded by casuistry, or metaphysical subtlety. They will receive that fair and reasonable construction always applied to contracts of this character.

The accident was a continuous and almost instantaneous one, no new or separate agency intervening.

2. The distinction adopted by the learned judge, between an accident resulting from the race, and an accident resulting from the carelessness of the driver at the race, cannot be maintained. And the instruction to the jury upon this point was entirely erroneous.

An accident is never the *necessary* consequence of a race; *Some* incident or other must intervene to produce it. The misconduct of the driver, a defect in the vehicle, the harness, or the track, a fright or stumbling of the horse. In all these cases, might it be claimed with the same propriety, that the injury was not caused by the race, but by the intervening incident that immediately occasioned it.

Such is not the fair and reasonable construction which the rules of law give to contracts. Both the plain language and the spirit of the clause in question preclude it. If such were its interpretation, there could be no conceivable case to which it would apply. No death could ever be caused by a breach of the law.

Recklessness and unfairness in driving are natural incidents in such a contest, frequently occurring, and reasonably to be expected. They are perhaps the principal source of danger.

The court will not investigate whether a transaction that was criminal throughout, was conducted according to the rules established for its management by those engaged in it.

The case *Insurance Co. v. Tweed*, 7 *Wallace* 44, is decisive against the plaintiff upon this point.

See also *Waters v. The Merchants Insurance Co.*, 11 *Peters*, 213.

Tilton v. The Hamilton Ins. Co., 1 *Bosworth*, 367.

Clough v. Mut. Ben. L. Ins. Co., 13 *Allen* 308.

3. Equally untenable is the proposition that has been claimed by the defendant in error, though not adopted by the Court on the trial that as the illegality of the race consisted in its being run for money, and as the wager was not in itself fatal to the assured, his death, though occasioned by the race, was not, after all, caused by a breach of the law.

As well might it be set up, if the assured had lost his life in committing a robbery, that it was only the absence of title to the property, in the robber, that made the transaction criminal, and as death did not ensue from the title, it was not occasioned by a violation of the law.

The whole transaction must be taken together, and can not be separated. If there had been no purse, there would have been no race.

The match was a public one. Three separate purses were offered to be contended for. The races were widely advertised, an admission fee charged at the gate, and entrance money

paid for the horses. The assured was hired to drive, by one of the owners of the horses.

Record, folio 39.

It is therefore idle to contend that he would have lost his life, or been engaged in any race at all, if the stakes, the material and indispensable element of the whole transaction, had not been offered.

It is the stake itself, in the crowd it gathered, the excitement it occasions, and the stimulus it administers to the efforts and determination of the contestants, that makes such a race far more dangerous than an ordinary and innocent trial of speed.

It is therefore in strictness and truth *the racing for money* that occasioned the death.

III. The driving of the race by the assured was a wilful exposure of himself to an unnecessary danger or peril, within the meaning of the terms of the policy.

The jury should have been so instructed in accordance with defendant's request. And the instruction given on this point was erroneous

The voluntary engagement of the assured in an illegal act of a dangerous character was conceded. He lost his life by the very danger thus voluntarily and illegally incurred.

The term "*necessary*" should doubtless receive a reasonable rather than a literal definition. But upon the most liberal construction it can hardly be maintained, that an act which is criminal, is reasonably necessary.

Or that the peril thereby incurred under the circumstances of this case was not an apparent peril—obvious, to the common sense, and shown by the common experience of mankind.

The evidence on this point raised no question proper to be submitted to a jury. The construction of the policy upon the conceded facts was for the court and not for the jury.

But if any question should have been submitted at all, the rule laid down by the court was wrong. The construction of the policy in this respect does not depend on the question "whether intelligent, fair-minded people in the vicinity of the "insured where the contract was made, would regard it as ex- "cluding the driving of such a race." *Record, folio* 46.

Nor on the inquiry "how ordinary people in the part of the "country where the insured resided, in view of the state of "things then existing, the frequency of such races, and the "way in which such matches are usually regulated, would "naturally understand such language, whether as precluding "such driving or not." *Folio* 45.

If such were the rule of construction, evidence to prove the opinion entertained on the subject by "fair-minded and intelligent" citizens, would necessarily become admissible. And the opinion of the majority would determine the point.

E. J. PHELPS,

Counsel for Plaintiff in error.

Note.

The following opinion was prepared by Mr. Justice Woodruff, on the hearing of the former bill of exceptions in this case, in the Circuit Court. It is appended to the brief as presenting very clearly the argument in support of the conclusions reached. Mr. Justice Smalley is understood to have concurred in the result, but not in those propositions inconsistent with his charge to the jury, as shown in the present record.

CIRCUIT COURT

OF THE UNITED STATES,

FOR THE

DISTRICT OF VERMONT.

ELIZABETH M. SEAVER,
vs.
THE TRAVELLER'S INSURANCE CO.

On motion for a new trial.

WOODRUFF, Circuit Judge.

The plaintiff can only recover, if the true construction of the contract of insurance makes the defendants liable. The defendants had the most complete right to protect themselves against loss by any risk or hazard which they saw fit to designate and exclude from their undertaking, and to declare to what injuries or causes of in-

jury or death, their insurance should not apply, and the insured must be deemed to have fully assented thereto.

It was therefore agreed by both of the parties to the contract that the insurance in question should not extend "to any death or injury caused by duelling, fighting or other breach of the law on the part of the assured, * * * or by his wilfully exposing himself to any unnecessary danger or peril."

The proof given by the plaintiff tended to show that John B. Seaver, whose life the defendants have insured for the benefit of the plaintiff, was engaged in a trotting race on a trotting course at Morrisville, Vermont, for a wager or stake with two others—$50 to be paid to the party entering the winning horse, and $20 to be paid to the party entering the second best horse,—the said Seaver driving on the inside of the track, one Gilman in the center and one Cutting on the outside; that as they were about turning the first corner, while Seaver was gaining on Gilman who was a little ahead, Gilman so reined his horse towards the inside of the track that he struck Seaver's horse and the wheel of Seaver's carriage was thrown up by the hub of the wheel of Gilman's carriage, and Seaver jumped to the ground, free from his team, and spoke to his horse; the horse then slackened and Seaver started forward and caught the reins; the horse turned suddenly, knocking Seaver down, and Seaver's feet became entangled in the lines; he was dragged two or three rods upon the ground and his head struck a piece of timber; he was thereby so injured that he died in thirty-six hours. The proof also tended to show that the collision was caused, without fault on the part of Seaver, by Gilman's so turning his horse to the inside of the track, and if the latter had kept his own track the accident would not have occurred.

Other evidence showed the manner in which this race with others were gotten up by an association of individuals called "The Morrisville Trotting Association," who offered the stakes or prizes by advertisements and handbills, leased the race course, charged and re-

ceived an entrance fee from those who choose to enter horses for the races, and a fee from the spectators for admission to the grounds, and that the horse driven by Seaver was regularly entered for the race in question, and an entrance fee paid therefore, with other particulars not material except as showing that the said race was deliberately and voluntarily pre-arranged and entered upon for the money or stakes offered as prizes.

By the Statutes of Vermont "all racing, running, *trotting*, or pacing of any horse or horse kind, for any bet or wager of money or other valuable thing, or for any purse or stake made is * * declared a misdemeanor, and the parties, contrivers and abettors thereof shall pay a fine not exceeding five hundred dollars."

On the trial of this case the court admitted evidence on the part of the Plaintiff tending to show that this Statute had for many years been generally disregarded, especially by the State and County Agricultural Societies, who offered premiums for speed in horses, to be run or trotted for at the fairs of their Socities, and that such races were attended and approved by the community generally, including the highest officers of the State. There was no evidence in contradiction of the evidence so given.

The question of liability by the defendants upon their policy under their evidence presented these enquiries, viz:

Was the driving of such trotting race by Seaver a "breach of the law" or a "willful exposure to unnecessary danger or peril" within the meaning of the policy? and did such driving of the race cause the injury or death of the said Seaver within the meaning of such policy?

The defendants' counsel insisted upon the affirmative, that the previous disregard of the statute was wholly immaterial, and that upon the evidence the plaintiff was not entitled ro recover, and they requested the court so to instruct the jury on each point severally. This was declined.

The court therefore expressed the opinion that the injury and death of Seaver were not caused by any breach of the law on his

part within the meaning of the proviso in the policy; and that the driving of the race was not of itself under the evidence "a breach of the law" within the meaning of the proviso aforesaid. But the court stated that if the defendants' counsel desired to go to the jury with the question, whether the driving of the race was the proximate cause of the death of Seaver, or whether it was caused by the tortious act of Gilman, they could do so.

Under the intimation of the court thus given, the defendants' counsel declined going to the jury, and the court therefore ordered a verdict for the plaintiff for $3,000, (the sum insured) and interest

The defendants having duly excepted, the questions before stated are before us on this motion for a new trial.

1. The evidence that the people of Vermont generally disregard their statutes or that they and even their highest State officers attend and approve of horse-racing, could not legally affect any material question in this cause. If racing, or trotting for a wager of money, purse, or stake, is declared by statute a misdemeanor, punishable by fine, it is unlawful. No mere laxity of public morals, nor general or official disregard of the law can make it lawful or operate as a repeal of the statute; and if, being a breach of the law, it was one of the breaches described in the policy, then the defendants were entitled to the instruction requested on that point.

2. It is argued in behalf of the plaintiff that "other breach of the law," as used in the policy, does not include a breach of the law against horse-racing, but (to use the language of the argument) only "such violations as necessarily imparted physical injury." This argument is not satisfactory to my mind. It would be difficult to say that any breaches of the law necessarily involve physical injury to the law breaker in their perpetration. Their due punishment may it is true, but that is not all that is referred to in the policy. Even such breaches of the law as are enumerated do not *necessarily* result in injury to him. Injury to assured, if he en-

gage therein, may be in a high degree probable, but it is not necessary or inevitable; and if probability of personal injury be the test, then I think it clear that the court cannot judicially declare that horse racing is not dangerous and will not probably result in injury. The concluding sentence of the proviso is of great significance on this precise point. The defendants have expressly excluded, thereby, any liability for an injury to the assured or for his death, caused by his wilfully exposing himself to unnecessary danger or peril. A burglary does not necessarily produce personal injury to the burglar, but it could not be claimed that if the assured were to commit a burglary, and meeting resistance or being discovered, should receive injury or be killed in the act, the defendants would be liable under such a policy.

3. It is insisted that here the death was not caused by the driving or the trotting in the race; that in determining the liability of insurers, the proximate cause of the loss is alone to be considered, and numerous cases on the law of marine and fire insurance are referred to as establishing the proposition. (Patapsco Ins. Co. vs. Coulter; 3 Pet. 222. Waters vs. Ins. Co; 11 Pet. 213. Bush vs. Royal Exch. Ins. Co.; 2 Barn. & Ald. 79. Walker vs. Maitland; 5 Ib 171 Bishop vs. Pentland: 7 Barn. & Crels. 219 Mut. Ins. Co. vs. Sherwood; 14 How. 351. Mathews vs. Howard Ins. Co; 1 Kern 9.) And upon the authority of these cases, and in their application to the facts here proved, it is said that the injury and death were caused either by the tortious act of Gilman in turning towards the inside of the track, or by the lawful effort of Seaver, (after he had come safely to the ground) to stop his horse or by his becoming entangled in the reins. That it was therefore as to him an accident, and if the trotting of the race contributed thereto, it was but a remote cause which cannot affect the right of recovery.

The court could not say upon the evidence, that the act of Gilman was illegal or tortious. The laws of Vermont do not regulate or prescribe the manner in which such a race shall be pursued or

the precise path to be kept by the competitors. The conduct of Gilman may perhaps have been inconsistent with the rules of fair racing which obtain with those who are in the habit of engaging therein. That question I will not undertake to decide. But there is no evidence or presumption that he contemplated a collision or anything more than, by impeding Seaver's progress, or diminishing the length of his own circuit, to preserve an advantage in the race.

But without dwelling upon that criticism I think that the true interpretation of the proviso in the policy excludes liability for the incidental consequences of the horse racing; and that the proviso sufficiently expresses that intention. I need not add that the intention of the parties ascertained by the terms of the contract is controlling.

The authorities cited do not meet the case; they are of this description, viz; an insurance against loss by perils of the sea, a loss by a peril of the sea; the insurer will not be protected from payment of the loss by proof that negligence or bad management of the master and crew tended to bring the vessel within the reach of the peril, or to make the peril disastrous. Or an insurance against loss by fire and a loss by fire; the insurers are not protected by proof of negligence in the servants of the insured which caused the fire. The question discussed in these cases was itself being mooted, and opinions differed even on the point of liability there.

Now suppose an insurance upon a vessel against loss by perils of the sea, but with an express proviso that the insured shall not be liable for a loss caused by the negligence or misconduct of the master or crew. No case is cited holding that under such a proviso the insurer is liable when it is proved that the negligence or misconduct of the master and crew subjected the ship to the peril of the sea by which she was lost, it being proved that without such negligence or misconduct she was safe; and yet the immediate cause of loss in such a case might be the peril of the sea.

The parties, in such case and in the present case, have not left the matter open to the rule in the cases cited, they have made a stipulation in terms excluding liability for injury arising from cer-

tain causes. Do they mean when such causes operate immediately as proximate causes of injury or death, or do they mean to exclude injuries happening therefrom in the larger sense that but for the cause excluded the injury would not have happened?

It is difficult to suggest an injury received in horse racing in reference to which the racing is not in some sense the remote cause, as distinguished from the proximate case, according to the agreement of the plaintiff in this case.

For example: The axle of the sulkey breaks through a defect in its original construction and the assured falls and is injured. A remote cause of the injury was the negligence or want of skill in the construction of the axle; a less remote cause was the breaking of the axle; a less remote cause was the fall of the assured to the ground and in a very strict sense that would be the proximate or immediate cause of the injury. In a supposable case the presence of a stone at the point of contact with the ground as he fell was in truth the cause of injury and perhaps of death, where without the presence of the stone it would not have happened.

Now, did the running of the race cause the injury or death in any such case? In my opinion it did not clearly.

The contract of the parties was not made in reference to any nice shades of distinction between the various concurring causes of injury. They intended to extend liability for injury, resulting whether directly or indirectly from the illegal act, and where but for the illegal act of the assured in running the race it could not have happened; where by running the illegal race the assured had voluntarily and "unnecessarily exposed himself to danger and peril." These words are peculiarly significant upon this question whether the parties intended any criticism upon the words "*causa proxima*" and "*causa remota.*"

They meant that when the assured entered upon the breach of the law or wilfully exposed himself to any unnecessary danger or peril, he should, in respect to the consequences near or remote, di-

rect or incidental, be, while in that situation, entirely without the operation of the policy and not protected thereby.

There is moreover much reason for saying that horse-racing is dangerous, and that the last clause of the proviso is of itself a defence. Certainly the court cannot assume to say that horse-racing is not dangerous, or that the assured did not, by engaging therein, "wilfully expose himself to unnecessary peril;" *this* may be a question for the jury, but on the other points there is I think no doubt.

I think the defendants were entitled to the instruction prayed for and that a new trial should be ordered, costs to abide the event.

NO. 436.

Supreme Court of the United States.

THE TRAVELERS' INSURANCE CO.,

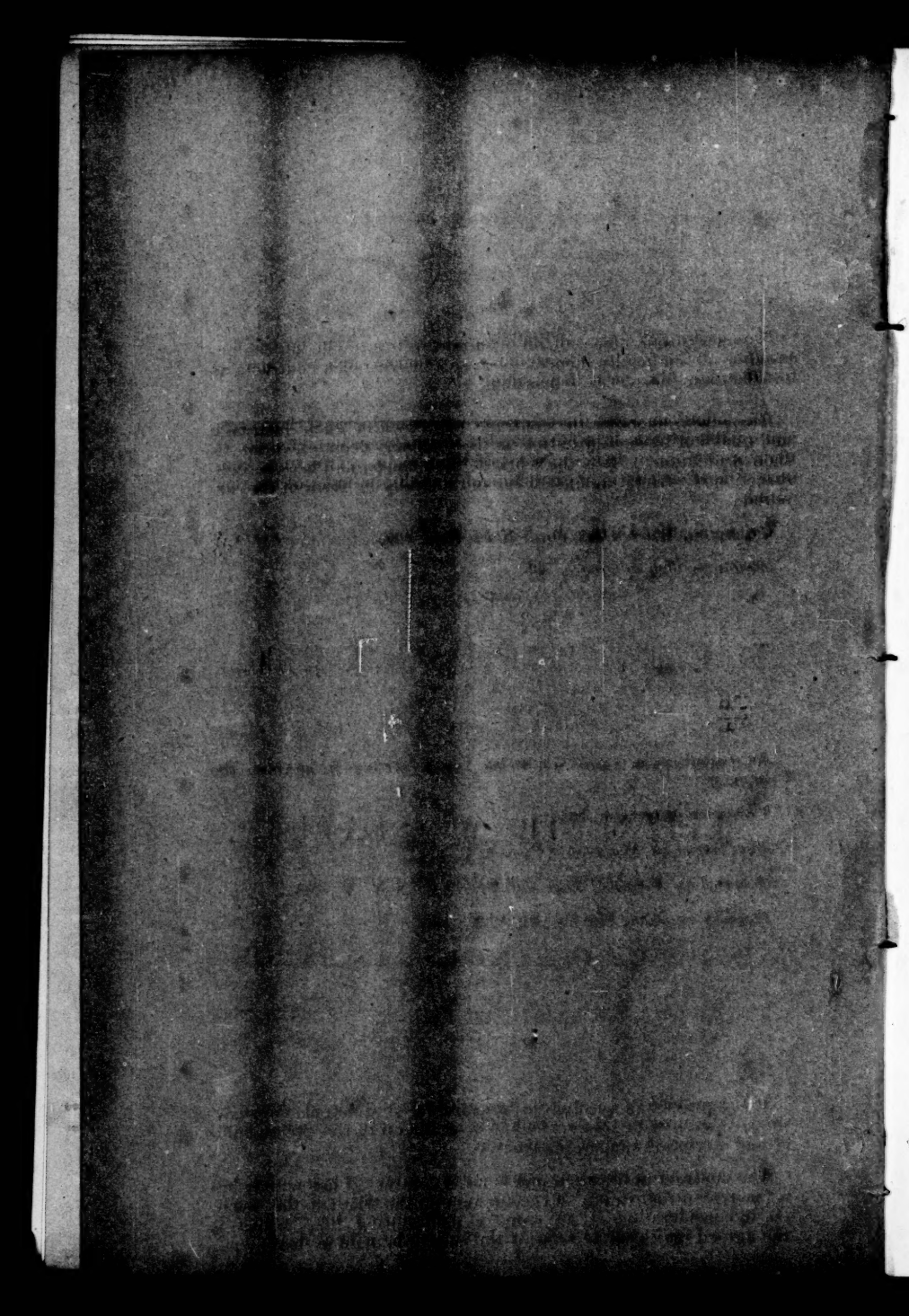
Plaintiff in Error,

vs.

ELIZABETH W. SEAVER,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.



I.

The meritorious object of life insurance is to provide for the necessities of the family, hence courts so construe such contracts as to effectuate this object, if possible.

The policy embodies the contract, expressed in such language and qualified by such provisos as the Company deem essential to their protection. It is the work of their hands, and is to be construed most strictly against them and liberally in favor of the assured.

Palmer vs. Warren Ins. Co., 1 *Story Rep.*, 360.

Yeaton vs. Fry, 5 *Crouch*, 335.

An exception in a policy is to be taken strongest against the Company.

1 *Duer on Insurance*, 161.

Hinclekoper vs Douglass, 3 *Crouch*, 1.

Breasted vs Farmers' Loan and Trust Co, 8 *N. Y.*, 305.

Hoffman vs Ætna Ins. Co., 32 *N. Y.*, 405.

If the proviso in question is susceptible of different constructions, that must be taken which is most liberal to the policy holder and strongest against the insurer.

The contract of life assurance is not a contract of indemnity, but a "mere contract to pay a certain sum on the death of the assured, in consideration of an annuity paid during life," which is the agreed *equivalent in value* of the sum to be paid at death.

In short, Life Insurance is simply a mode of investment.

Dalby vs. The India and London L. and A. Soc. 28 *Eng. Law and Eq. Rep.*, 317.

Miller vs. The Eagle Life and Health Ins. Co.. 2 *E. D. Smith*, 294.

Rawle vs. Am. Life Ins. Co., 36 *Barbour* 362, *S. C.*, 27, *N Y.*, 282.

Seaver paid the Company an agreed sum upon their promise to pay his legal representatives an agreed sum at his death, and although the time or manner of his death could not be fixed, still from the tables of mortality returns the Company could estimate and determine these events with accuracy almost absolute. The actual value of 10,000 and more lives insured being determinable with accuracy, the company suffered no loss if Seaver had died the day following the execution of the policy. Such probability was estimated, and paid for in the premium. The policy is to be construed, in view of these facts, not as a wager, nor an agreement of indemnity, *but as a mode of investment.*

II.

Insurance against accidents resulting in death is a mode of life insurance, and is subject to the rules of construction applicable to ordinary life policies.

The policy in question insured Seaver against *all accidents* caus-

ing *personal injury*; and it will be observed that it was made known to the Company, in the application, that Seaver was a livery stable keeper, and as such concerned in the management of horses, so Seaver pays the consideration of an assurance against *any accident* occurring in *that business* as well as any other.

No question can be made but that Seaver's injuries and death were occasioned by an *accident* within the meaning of this policy.

Worcester defines accidents to be "an event proceeding from an unknown cause, or happening without the design of the agent, an unforseen event, incident, casualty, chance."

Webster calls it "an event that takes place without one's foresight or expectation, an event which proceeds from an unknown cause, or is an unusual effect of a known cause and therefore not expected, chance, casualty, contingency."

Cockburn, C. J., in *Sinclair vs. Maritime Passengers Assurance Co.*, 107, *Eng. Com. Law*, 476, says: "It is difficult to define the term 'accident' as used in a policy of this nature so as to draw with perfect accuracy a boundary line between injury or death from accident and injury or death from natural causes, such as shall be of universal application. At the same time we think we may safely assume that in the term accident, as so used, some violence, casualty or vis major is necessarily involved."

In a later case, *Trew vs. Railway Passengers' Assurance Co.*, 6 *Hurl & Norman*, 839, the question arose whether a death from drowning was accidental. It was claimed that there was no external violence in such cases, but the Court held that a death caused by drowning was accidental within the meaning of the policy, and further stated, in answer to the argument of counsel: "If a man fell from a housetop, or overboard from a ship, and was killed, or if a man was suffocated by the smoke of a house on fire, such cases would be excluded from the policy, and the effect would be that policies of this kind in many cases when death resulted from accident would afford no protection whatever to the assured. *We ought not to give these policies a construction which will defeat the protection of the assured in a large class of cases.*"

In *Fitton vs. The Accidental Ins. Co.*, 17 *Common Bench, N. S.*, 122, an exception was inserted in one of these policies against liability for "*hernia*, erysipelas, or any other disease or cause arising within the system of the assured before, or at the time, or following such accidental injury, whether causing death, or disability directly or jointly with such accidental injury," it was held that death from strangulated hernia, caused solely by external violence, followed by a surgical operation performed for the relief of the patient, was not within the exception.

Willes, J., further in this case says: "It is extremely important with reference to insurance, that there should be a tendency rather to hold for the assured than for the company, when any ambiguity arises upon the face of the policy." And, after alluding to the value of such insurance, says: "But its value would be very much diminished if it were held that the company was absolved from liability on its policies if it should appear that the immediate

cause of the death of the assured was strangulated hernia arising from external violence."

Paine, J., delivering the opinion of the Supreme Court of Wisconsin, in *Schneider vs. Provident Life Ins. Co.*, 24 *Wis. Rep*, 28, an accidental insurance case, says: "An accident may happen from an unknown cause. But it is not essential that the cause should be unknown. It may be an unusual result of a known cause, and therefore unexpected to the party." He then cites the English cases above with approval, and holds with them that whether the injured party was guilty of negligence contributing to the accident *does not arise at all in this class of cases.*

If Gilman while riding by Seaver's side had suddenly drawn a pistol and shot him, the death of Seaver would be an accidental death, an unexpected event. Now it makes no difference how Gilman kills Seaver, whether by shooting him, or, unexpectedly to Seaver, driving intentionally and tortuously against him, and producing his death, as the Jury say he did do in this case. In either event his injuries were accidental.

III.

Seaver's death then being an accidental one, the Company insist that it was caused by a *breach of law* within the meaning of the 2d proviso in the policy, which provides that this insurance shall not extend to "any death or injury *caused* by dueling or fighting, or other breach of the law on the part of the assured."

(*a.*) Where *general* words follow *special* words of confined meaning, the general words are limited to subjects *ejusdem generis.*

Sandiman vs. Beach, 14 *Eng. Com. Law*, 96.

Regina vs. Merrill. 55 *Eng. Com. Law*, 452.

Rex vs. Mosely, 9 *Eng. Com. Law*, 105.

Vaughn vs. Porter, 16 *Vt. Rep.*, 266.

(*b.*) By inserting this proviso the Company seek to exempt themselves from their liability for *personal injuries only*, which liability is the very thing Seaver contracts for. They have no object to forbid duelling, only so far as it may make them liable, hence if the assured should fight a duel and while in the very act should receive an accidental injury from another source, as if he were struck by lightning, the company are not relieved, as they only contract for an exception in cases where the duel *causes* the injury. So also in the case of "fighting."

(*c.*) These special words, "duelling" and "fighting," refer to acts which necessarily import *personal injury.* In either case the party engaged inflicts, and expects to receive such injury. The Company then have a special object in enumerating these acts.

Now, then, the *general* words "or other breach of the law" must be confined to such illegal acts as affect the company's liability, such acts as naturally, legitimately and usually result in personal injury.

The Statute of Vermont referred to is a mere police regulation, and it will be observed that the Statute does not make the act of driving a race illegal, it is the *wager of money* that taints the transaction. The breach of such a law in no sense naturally or usually imports or results in personal injury.

IV.

The maxim, *non remota causa sed proxima spectatur* applies to contracts of insurance. It is especially applicable to this case, inasmuch as the company use the word "caused" in qualifying their liability in the second proviso.

The breach of law must not only be proximate as a cause of the death, it must be adequate, also. If it is inadequate to produce the result, it is not the cause.

3 *Kent's Com.*, 302,

Arnould on Ins., 764.

Williams vs. Suffolk Ins. Co., 3 *Sumner*, 276,

N. Y. Life Ins. Co., vs. Graham, 2 *Duvall*, 506.

Livie vs. Jansen, 12 *East*. 648.

Ionides vs. Ins. Co., 108 *Eng. Com. Law*, 259.

This last case reviews the whole doctrine of insurance law; was decided in 1863, and fully sustains the charge of the Court below, and was approved in 1865, in the case of *Marsdon vs. City and County Assurance Co*, 1 *Law Rep., Com. Pleas, cases* 231. See, also:

Patrick vs. Com. Ins. Co., 11 *Johnson*, 14.

Tilton vs. Hamilton Ins. Co. 14 *How Pr. Rep.*, 372.

Waters vs. Louisville Ins. Co., 11 *Peters*, 213.

V.

This question has been passed upon in several cases.

Harper vs. Ins. Co., 19 *Mo.*, 506.

Breasted vs. Farmers' Loan and Trust Co., 8 *N. Y.*, 304.

Cluff vs. Mut. Benefit Life Ins. Co.,13 *Allen*, 309, *and* 99 *Mass.*,307.

Bradley vs. Mut. Ben. Life Ins. Co., 45 *N. Y. Rep.*, 422.

Rapallo, J., delivering the opinion of the Court of Appeals in the last case, uses this language: "A difference of opinion exists between the members of this Court as to whether the proviso applies only to violations of the criminal law," (as the Missouri and Massachusetts cases above hold) "or whether it embraces all illegal acts of such a character as to lead to violence. But independently of that question,and whatever be the nature of the violation of law urged by the insurance company, as avoiding the policy, it seems to be clear that a relation must exist between the violation of law and the death, to make the defence; that the death must have been caused by the violation of law to exempt the Company from liability. It cannot be the true meaning of the proviso that the policy is to be avoided by the mere fact that at the time of the death the assured was violating the law, if the death occurred from some cause other than such violation."

Seaver's death, if happening while violating a law, was in no legal sense *caused* by such violation. We must look for some agency proximate and adequate to produce death. Suppose Seaver and Gilman on Monday drive a race for pleasure, with no wager depending, as they may lawfully do, and a collision occurs by the wrongful act of Gilman, and Seaver is injured in all respects precisely in the manner shown in this case, what is the cause of his injuries? No law is being violated, and some cause of neces-

sity exists. A personal injury like this must have some efficient working cause; bviously the wrongful act of Gilman is the proxmate working cause of such injury.

Could the cause be different if on Tuesday they drive a race, with a wager depending, and so unlawfully, and Seaver is injured, in all respects, the same as on Monday?

Again, in New York, racing for a purse is not illegal. A., insured by this Company, rides a race there for a purse, and is injured. B., holding a policy of this company verbatim like A.'s, rides a race in Vermont for a purse, and is injured in precisely the same manner as A. The Company say the cause of A.'s injury is different from B.'s.

A new force intervened after Seaver commenced the race, sufficient to stand as the cause of the misfortune. See opinion of Justice Miller in *Insurance Co. vs. Tweed*, 7 *Wallace, at page* 52. The illegal act only brought Seaver within reach of the new cause of his injury.

VI.

The question as to Seaver's wilful exposure to peril is settled by the Jury, and the charge of the Court is unexceptionable

Schnieder vs. Life Ins. Co., 24 *Wis.*, 28.

VII.

The special verdict of the Jury shows that when Seaver was injured he had ceased all connection with the race. The accident of the race was the collision. By that accident Seaver was uninjured. He jumped to the ground, and had he remained standing where he landed he would have been unhurt He then sets out upon a new undertaking, and in his foot race is injured.

Geo. F. Edmunds

J. D. Dafter